

Exhibit 2



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February 2, 2024

Via E-Mail

Michael L. Francisco, Esq.
McGuireWoods LLP
888 16th St., N.W. Suite 500
Washington, DC 20006

Re: *Doe v. Mast*, No. 3:22-cv-49-NKM

Michael,

I am writing to address the privilege log provided by J&S Mast yesterday. The privilege log is deficient for multiple reasons.

Fundamentally, it fails to meet even the most basic requirements of a privilege log. Rule 26(b)(5)(A)(ii) explicitly requires parties claiming a privilege to “describe the nature of the documents, communications, or tangible things not produced or disclosed – and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Yet, the January 31 privilege log fails to include *any* descriptions of the 1,226 documents listed on the 27-page log. Without such descriptions, Plaintiffs cannot “assess the claim” of privilege for any of the listed documents.

Moreover, the log appears to include hundreds of documents for which no claim of privilege could be rationalized. Indeed, for many of the log’s entries, *no privilege is even asserted* on the log. Yet, these documents apparently have been withheld from your document production.

The deficiencies in your log are extensive. Below is a listing of the deficiencies we’ve been able to discern thus far, and we reserve the right to raise additional deficiencies as we continue to review the log.

No Privilege Asserted

There are 145 entries on the log for which *no privilege is asserted*. And nothing about the minimal information provided on the log suggests that they are privileged. Thus, those documents should be produced immediately. Please immediately produce those documents.



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Inappropriate Assertions of Privilege (Or No Assertions of Privilege) Over Communications With Government Employees

J&S Mast appear to be claiming work product protection on communications with some government employees. Additionally, the log lists certain communications with other government employees, but with *no assertion of a privilege at all*. There can be no basis for these documents' inclusion on a privilege log. This concern applies to communications with, or documents from:

<u>Government Employees</u>	<u>Privilege Assertion</u>
Johnston, Carol cjohnston@goochlandva.us	work product asserted
tiffany.overton@vdh.virginia.gov	work product asserted
GOV.BB <immigration.bws@barbados.gov.bb>	work product asserted
Department of State	work product asserted
USCIS	work product asserted
Davis, Phillip B LTCOL USMC USSOCOM MARSOB (USA) <Phillip.b.davis.mil@socom.mil>	no privilege asserted
West, Norman S Col USAF AFDW SG (USA) <norman.s.west.mil@mail.mil >	no privilege asserted
janet.rainey@vdh.virginia.gov	no privilege asserted
fairfield, joseph M col usarmy centcom usfor-a (usa)	no privilege asserted
DHS/USCIS	no privilege asserted
Mallorca, Kimben M Capt USAF 455 EMDOS/CCE	no privilege asserted
David E. Faherty, LT USN	no privilege asserted
Kathryn Wyer	no privilege asserted

Please immediately produce these documents.



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Inappropriate Assertions of Privilege (Or No Assertions of Privilege) Over Communications With Non-Attorneys

J&S Mast also appear to be claiming a work product protection over communications with non-attorneys where no reference is made to anticipated litigation. Additionally, the log lists certain communications with non-attorneys that have ***no assertion of a privilege at all***. There can be no basis for these documents’ inclusion on a privilege log. This concern applies to communications with:

<u>Non-Attorneys</u>	<u>Privilege Assertion</u>
Morgan, Nastaran N (LU Shepherd)	work product asserted
Chris Cartwright <chris m c86@hotmail.com>	work product asserted
Paul Cartwright <pullcartt@coralwave.com>	work product asserted
ahmadandnatalie@gmail.com	work product asserted
jeff.park@albertainstitute.ca	work product asserted
kambiz.potito@gmail.com (also listed as “Ole ole Ole ole < kambiz.potito@gmail.com>”)	work product asserted
caleb.mast@gmail.com [work product asserted]	work product asserted
Boggs, Sarah R *HS <sb7dv@hscmail.mcc.virginia.edu	work product asserted
Jonathon Brown <jonathan@eastlake-church.com>	work product asserted
Cynthia Faison	work product asserted
Davis, Phillip B LTCOL USMC USSOCOM MARSOC (USA) <Phillip.b.davis.mil@socom.mil>	no privilege asserted
HeidiW	no privilege asserted



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Day Translations <contact@daytranslations.com>	no privilege asserted for 6 entries; work product asserted for 1 entry
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Please immediately produce all such communications. If you refuse to do so, please identify – as to each withheld communication – the litigation at issue and the basis for the assertion of work product.

Unsubstantiated Assertions of Work Product

Almost 100 entries lack information for each of the author/from/to/cc/bcc fields and are claimed as work product. Based on their filenames, none appear to qualify for work product privilege as they do not appear to be prepared by Joshua and/or Stephanie Mast or their lawyers. Those log entries are shown on Exhibit A. Please immediately produce these documents. If you refuse to do so, please identify the documents’ authors and the litigation at issue.

Unsubstantiated Assertions of Common Interest Privilege

Other documents are claimed to be subject to the “common interest” privilege. Yet, many appear to either be photographs or a podcast. Moreover, no indication is given regarding any of them as to with whom the common interest privilege purportedly exists. For all documents claimed to subject to the “common interest” privilege, please identify the person(s) with whom the common interest purportedly exists, when those parties entered into a common interest agreement, the basis for the assertion of common interest, whether the common interest agreement was reduced to writing, and why those that are photographs and a podcast are subject to that privilege.

Unsubstantiated Assertions of Spousal Privilege

Certain documents are identified as protected by the spousal privilege. Yet, their File Names establish that they are documents either already produced in this litigation or the state court litigation or not subject to that privilege at all. Those log entries are shown on Exhibit B. Please immediately produce these documents.

Emails Using Liberty University or Department of Defense Email Domains

Many of the communications on which you assert a privilege were sent or received by someone using a Liberty University or Department of Defense email address. The senders or



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recipients of those emails – whether Joshua Mast or anyone else – did not have a reasonable expectation of privacy in such communications and, thus, no privilege applies. This applies to the 177 entries on the log that were sent or received by someone using a Liberty University email address, and the 21 entries that were sent or received by someone using a Department of Defense email address. Please immediately produce those documents.

Documents Identified as “Privileged-Redact”

Sixty-one documents are identified as having privileged redactions, suggesting that they were produced to Plaintiffs in redacted form. But *none* of those documents have been produced to Plaintiffs – thus, contradicting your recent assertion that J&S Mast have made their “final” production. See 1/26/24 Letter from M. Francisco to M. Eckstein. Please immediately produce these documents.

Unidentified individuals/entities

For 215 entries on the log, you have not provided any information in each of the following fields: author, from, to, cc, and bcc. Of those:

- 76 aren’t identified as being protected by any privilege
- 74 are marked as work product
- 19 are marked as both attorney-client privileged and work product
- 18 are marked as spousal privilege
- 17 are marked as common interest privilege
- 11 are marked attorney-client privileged

As to the 76 that aren’t identified as being protected by any privilege, please immediately produce these documents. As to the remaining documents, without any information in the noted fields, Plaintiffs cannot properly assess your privilege assertions. Please provide this information so that your privilege assertions can be properly assessed.

For other entries on the log, you populated the author, from, to, cc, and/or bcc fields with only an email address, obscure reference, or undecipherable number. Some of the email addresses are recognizable to us, but others are not. Please identify the following people/entities:



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- 480 entries with the author, from, to, cc, and/or bcc fields identified as “Local Device <DB-68f5aa50f8d4675d8d6dac553cd9a993>”
- 7 entries with the author, from, to, cc, and/or bcc fields identified as “Day Translations contact@daytransaltions.com”
- 3 entries with the author, from, to, cc, and/or bcc fields identified as “kambiz.potito@gmail.com” or “Ole ole Ole ole < kambiz.potito@gmail.com>”
- 2 entries with the author, from, to, cc, and/or bcc fields identified as “dmastpgatour@gmail.com”
- 1 entry with the author, from, to, cc, and/or bcc fields identified as “ahmadandnatalie@gmail.com”
- 2 entries with the author, from, to, cc, and/or bcc fields identified as “WHS/ESD/DD”
- 2 entries with the author, from, to, cc, and/or bcc fields identified as “Administrator”
- 1 entry with the author, from, to, cc, and/or bcc fields identified as “eForms”
- 2 entries with the author, from, to, cc, and/or bcc fields identified as “K.Perkins”
- 2 entries with the author, from, to, cc, and/or bcc fields identified as “dylang”
- 1 entry with the author, from, to, cc, and/or bcc fields identified as “LSoaterna”
- 1 entry with the author, from, to, cc, and/or bcc fields identified as “HeidiW”
- 2 entries with the author, from, to, cc, and/or bcc fields identified as “Clamo”
- 3 entries with the author, from, to, cc, and/or bcc fields identified as “Rglenbert”

Relatedly, there are 16 entries on the log that all appear related to a Robert L Smith, but with different email addresses. Please confirm these communications are all with the same person:

- robert_smithii@email.com;
- Robert L. Smith II <robert smithiieemail.com>



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Attorney-Client Relationships

The log asserts an attorney-client privilege between Joshua and/or Stephanie Mast and various attorneys. Some we are familiar with. Others we are not. Please state the basis for your assertions of attorney-client privilege with:

- nathanaelbennett@gmail.com
- Lindevaldsen, Rena M <rlindevaldsen@liberty.edu>
- Noonan, Taylor <tnoonan2@liberty.edu>
- dmastpgatour@gmail.com
- Bradburn, Holden William <hwbradburn@liberty.edu>
- Jeffrey L. Dorsey
- Clamo
- Rglenberg
- Jay Sekulow <sekulow.jay@gmail.com>
- Don Whitenack
- Rob DeRise

Emails to Kimberley Motley

At least two emails appear to have been sent to Kimberley Motley in 2020 and 2021 and are marked as attorney-client privileged. But both your clients and Ms. Motley previously denied, under oath, ever having an attorney-client relationship. Please immediately produce these emails.

Documents Withheld On the Basis of *Touhy*

In previous correspondence, you advised that you are withholding certain documents while awaiting *Touhy* approval. As you are aware, under the *Touhy* regulations for the Department of Defense (32 CFR § 97, et seq.), Joshua Mast was required to ***immediately*** notify his DoD



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Component's chief legal advisor when he received our requests for production more than one year ago. *See* 32 CFR § 97.3 (defining "personnel" and "litigation requests"), § 97.9(b) (instructions for DoD personnel who receive litigation requests) (emphasis added).

Accordingly, please immediately produce the documents or communications showing that Mr. Mast notified his chief legal advisor (or any other appropriate authority under DoD regulations) of our litigation requests, served more than one year ago. Please also provide a log that identifies every responsive document that you are withholding on the basis that you are awaiting *Touhy* approval and describe how each document in question contains "official government information" as defined at 32 CFR § 97.3 ("all information of any kind and however stored that is in the custody and control of the DoD, relates to information in the custody and control of the DoD, or was acquired by DoD personnel due to their official duties or status").

We look forward to hearing from you and having these numerous, significant issues addressed expeditiously.

Sincerely,

A handwritten signature in dark ink, appearing to be "ME", with a stylized flourish at the end.

Maya M. Eckstein

cc: counsel of record



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Exh. A – Unsubstantiated Assertions of Work Product (Entries With No Author/From/To/Cc/Bcc, and With File Names Suggesting No Work Product)

Production Bates Begin	Production Bates End
J&SMAS- WDVA-00075	J&SMAS- WDVA-00075
J&SMAS- WDVA-00099	J&SMAS- WDVA-00113
J&SMAS- WDVA-00117	J&SMAS- WDVA-00117
J&SMAS- WDVA-00122	J&SMAS- WDVA-00122
J&SMAS- WDVA-00135	J&SMAS- WDVA-00136
J&SMAS- WDVA-00137	J&SMAS- WDVA-00137
J&SMAS- WDVA-00141	J&SMAS- WDVA-00141
J&SMAS- WDVA-00145	J&SMAS- WDVA-00146
J&SMAS- WDVA-00147	J&SMAS- WDVA-00147
J&SMAS- WDVA-00152	J&SMAS- WDVA-00152
J&SMAS- WDVA-00189	J&SMAS- WDVA-00192
J&SMAS- WDVA-00314	J&SMAS- WDVA-00318
J&SMAS- WDVA-00335	J&SMAS- WDVA-00339
J&SMAS- WDVA-00356	J&SMAS- WDVA-00360
J&SMAS- WDVA-00362	J&SMAS- WDVA-00362
J&SMAS- WDVA-00390	J&SMAS- WDVA-00394
J&SMAS- WDVA-00407	J&SMAS- WDVA-00410
J&SMAS- WDVA-00427	J&SMAS- WDVA-00431
J&SMAS- WDVA-00439	J&SMAS- WDVA-00439
J&SMAS- WDVA-00440	J&SMAS- WDVA-00440
J&SMAS- WDVA-00442	J&SMAS- WDVA-00442
J&SMAS- WDVA-00443	J&SMAS- WDVA-00443
J&SMAS- WDVA-00444	J&SMAS- WDVA-00444
J&SMAS- WDVA-00452	J&SMAS- WDVA-00452
J&SMAS- WDVA-00453	J&SMAS- WDVA-00453
J&SMAS- WDVA-00454	J&SMAS- WDVA-00454
J&SMAS- WDVA-00455	J&SMAS- WDVA-00455
J&SMAS- WDVA-00471	J&SMAS- WDVA-00475
J&SMAS- WDVA-00479	J&SMAS- WDVA-00489
J&SMAS- WDVA-00490	J&SMAS- WDVA-00494
J&SMAS- WDVA-00497	J&SMAS- WDVA-00498



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J&SMAS- WDVA-00499	J&SMAS- WDVA-00499
J&SMAS- WDVA-00500	J&SMAS- WDVA-00500
J&SMAS- WDVA-00512	J&SMAS- WDVA-00512
J&SMAS- WDVA-00513	J&SMAS- WDVA-00513
J&SMAS- WDVA-00514	J&SMAS- WDVA-00515
J&SMAS- WDVA-00516	J&SMAS- WDVA-00521
J&SMAS- WDVA-00522	J&SMAS- WDVA-00527
J&SMAS- WDVA-00528	J&SMAS- WDVA-00528
J&SMAS- WDVA-00529	J&SMAS- WDVA-00529
J&SMAS- WDVA-00530	J&SMAS- WDVA-00531
J&SMAS- WDVA-00539	J&SMAS- WDVA-00543
J&SMAS- WDVA-00561	J&SMAS- WDVA-00565
J&SMAS- WDVA-00566	J&SMAS- WDVA-00580
J&SMAS- WDVA-00598	J&SMAS- WDVA-00598
J&SMAS- WDVA-00605	J&SMAS- WDVA-00609
J&SMAS- WDVA-00610	J&SMAS- WDVA-00610
J&SMAS- WDVA-00627	J&SMAS- WDVA-00630
J&SMAS- WDVA-00633	J&SMAS- WDVA-00635
J&SMAS- WDVA-00637	J&SMAS- WDVA-00637
J&SMAS- WDVA-00638	J&SMAS- WDVA-00640
J&SMAS- WDVA-00641	J&SMAS- WDVA-00643
J&SMAS- WDVA-00644	J&SMAS- WDVA-00655
J&SMAS- WDVA-00656	J&SMAS- WDVA-00661
J&SMAS- WDVA-00662	J&SMAS- WDVA-00667
J&SMAS- WDVA-00668	J&SMAS- WDVA-00671
J&SMAS- WDVA-00672	J&SMAS- WDVA-00677
J&SMAS- WDVA-00678	J&SMAS- WDVA-00679
J&SMAS- WDVA-00680	J&SMAS- WDVA-00680
J&SMAS- WDVA-00681	J&SMAS- WDVA-00687
J&SMAS- WDVA-00741	J&SMAS- WDVA-00746
J&SMAS- WDVA-00766	J&SMAS- WDVA-00768
J&SMAS- WDVA-00769	J&SMAS- WDVA-00771
J&SMAS- WDVA-00772	J&SMAS- WDVA-00798
J&SMAS- WDVA-01233	J&SMAS- WDVA-01236
J&SMAS- WDVA-01663	J&SMAS- WDVA-01663



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J&SMAST-WDVA-01839	J&SMAST-WDVA-01857
J&SMAST-WDVA-01859	J&SMAST-WDVA-01875
J&SMAST-WDVA-01878	J&SMAST-WDVA-01896
J&SMAST-WDVA-01900	J&SMAST-WDVA-01917
J&SMAST-WDVA-02021	J&SMAST-WDVA-02042
J&SMAST-WDVA-02044	J&SMAST-WDVA-02064
J&SMAST-WDVA-02066	J&SMAST-WDVA-02088
J&SMAST-WDVA-02169	J&SMAST-WDVA-02191
J&SMAST-WDVA-02194	J&SMAST-WDVA-02218
J&SMAST-WDVA-02219	J&SMAST-WDVA-02241
J&SMAST-WDVA-02244	J&SMAST-WDVA-02268
J&SMAST-WDVA-02271	J&SMAST-WDVA-02293
J&SMAST-WDVA-02542	J&SMAST-WDVA-02548
J&SMAST-WDVA-04654	J&SMAST-WDVA-04675
J&SMAST-WDVA-04698	J&SMAST-WDVA-04742
J&SMAST-WDVA-05227	J&SMAST-WDVA-05227
J&SMAST-WDVA-05229	J&SMAST-WDVA-05229
J&SMAST-WDVA-05246	J&SMAST-WDVA-05246
J&SMAST-WDVA-05254	J&SMAST-WDVA-05254
J&SMAST-WDVA-05260	J&SMAST-WDVA-05260
J&SMAST-WDVA-05264	J&SMAST-WDVA-05264
J&SMAST-WDVA-05265	J&SMAST-WDVA-05265
J&SMAST-WDVA-05275	J&SMAST-WDVA-05304
J&SMAST-WDVA-05306	J&SMAST-WDVA-05306
J&SMAST-WDVA-05314	J&SMAST-WDVA-05314
J&SMAST-WDVA-05315	J&SMAST-WDVA-05315
J&SMAST-WDVA-05443	J&SMAST-WDVA-05443



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Exh. B – Unsubstantiated Assertions of Spousal Privilege

Production Bates Begin	Production Bates End
J&SMASST-WDVA-01380	J&SMASST-WDVA-01380
J&SMASST-WDVA-01386	J&SMASST-WDVA-01408
J&SMASST-WDVA-01410	J&SMASST-WDVA-01432
J&SMASST-WDVA-01498	J&SMASST-WDVA-01507
J&SMASST-WDVA-01513	J&SMASST-WDVA-01513
J&SMASST-WDVA-01729	J&SMASST-WDVA-01729
J&SMASST-WDVA-01740	J&SMASST-WDVA-01741
J&SMASST-WDVA-01742	J&SMASST-WDVA-01744
J&SMASST-WDVA-01745	J&SMASST-WDVA-01752
J&SMASST-WDVA-01757	J&SMASST-WDVA-01759
J&SMASST-WDVA-01760	J&SMASST-WDVA-01760
J&SMASST-WDVA-02044	J&SMASST-WDVA-02064
J&SMASST-WDVA-02332	J&SMASST-WDVA-02333
J&SMASST-WDVA-02334	J&SMASST-WDVA-02339
J&SMASST-WDVA-02340	J&SMASST-WDVA-02362
J&SMASST-WDVA-02363	J&SMASST-WDVA-02373
J&SMASST-WDVA-02374	J&SMASST-WDVA-02400
J&SMASST-WDVA-02949	J&SMASST-WDVA-02958
J&SMASST-WDVA-02960	J&SMASST-WDVA-02974